

[Advisory Opinion 1995-2]

March 21, 1995

[Name1 withheld]

Re: Request for Advisory Opinion Regarding Secondary Employment

Dear [Name1 withheld]:

You have requested an advisory opinion and, if necessary, secondary employment approval and/or a waiver to permit you to perform legal services for an existing client of Jay L. Cohen, Chair, Montgomery County Ethics Commission. You have provided the following information in support of your request.

Mr. Cohen has asked you to assist him in the preparation and trial of a matter for an existing client of his. The trial is scheduled for June 1995. Your compensation will be contingent upon the outcome of the trial and, in the event of a settlement or favorable verdict, you will be compensated on an hourly basis for the work you perform for the client. You will be employed by the client, rather than by Mr. Cohen. Also, you noted that you have been a part-time legal consultant for the duration of your appointment as a Commissioner on the Ethics Commission. You explained that the trial is consistent with your continuing self-employment as a professional. Mr. Cohen also indicated that the case did not involve Montgomery County as a party and that the assignment will be temporary. In addition, he stated that he does not anticipate the work to result in a conflict of interest, because he has observed you as highly competent and able to remain impartial in your analysis of issues that arise before the Ethics Commission.

The sections of the Ethics Law which may be involved in this request are:

Section 19A-12 of the Montgomery County Code 1994, as amended, which states in part:

(a) *General restrictions.*

(1) A public employee must not engage in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment.

\* \* \*

(b) *Specific restrictions.* Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

\* \* \*

(2) hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.

(c) *Exceptions.* Subsections (a) and (b) do not apply to:

\* \* \*

(3) a member of a board, commission, or a similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required . . . .

Section 19A-8(b) provides:

(b) After receiving a written request, the Commission may grant a waiver of the prohibitions of subsection 19A-12(b) or Section 19A-13 if it finds:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

Based upon the information provided, the Ethics Commission has decided that you do not need secondary employment approval to engage in the proposed litigation with Mr. Cohen. This matter is consistent with your self-employment as an attorney, which was publicly disclosed before your appointment to the Commission. The Commission sees no conflict of interest in the proposed work arrangement and agrees with Mr. Cohen that your independent judgment will not be impaired as a result of the work. Even if the Commission had determined that a waiver were necessary, the circumstances described in your letter and Mr. Cohen's letter suggest that the provisions of subsections 19A-8(b)(2) and (3) have been satisfied. Not only would the failure to grant such a waiver reduce the ability of the County to hire or retain highly qualified Commissioners, but the proposed employment is not likely to create an actual conflict of interest.

If you have any questions regarding this decision, please do not hesitate to contact the Ethics Commission.

Sincerely,  
[signed]  
Heidi Strassler, Vice Chair  
Montgomery County Ethics Commission

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission